IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 9-10-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.1700 of 2007
and
MP No.2 of 2007

P.Rajagurusamy .. Petitioner

vs

1.The Sub Registrar
Sub Registrar Office
Alandur at Nanganallur
Chennai 600 061.
2.The District Registrar
Registration, Saidapet
Chennai 600 015.
3.The Inspector General of
Registration
Mylapore, Chennai 600 004.
4.Vasantha
5.R.Rajakumari
6.R.Premkumar
7.J.Rajendrakumar
8.Kasturi
9.Arunkumar .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records of the first respondent and to quash the registration of the cancellation of the document No.2747 of 2005 dated 25.8.2005 by the respondents 4 to 9 in favour of the petitioner and four others on 16.3.2005 bearing Document No.1456 of 2005 at the office of the first respondent herein.

WEB COPY

For Petitioner : Mr.V.R.Karthikeyan
For Respondents : Mr.V.Arun
Additional Government
Pleader for RR1 to 3

ORDER

Invoking the writ jurisdiction of this Court, the petitioner seeks a writ of certiorari to quash the registration of the cancellation of the document No.2747 of 2005 dated 25.8.2005 executed by the respondents 4 to 9 in favour of the petitioner and four others on 16.3.2005 bearing Document No.1456 of 2005 at the office of the first respondent herein.

https://hcservices.ecourts.gov.in/hcservices/

2.The affidavit in support of the petition is perused. The Court heard the learned Counsel for the petitioner and also the learned Additional Government Pleader for the respondents 1 to 3.

3.The case of the petitioner who seeks the writ, is that he along with four others entered into an agreement for purchase of the undivided share having an extent of 2.50 acres in Old Patta No.7, Alandur Zamin, comprised in Survey Nos.5/1, 10/1, 17/1, 18/1, 19/1, 13/1, 14/1, 45/1, 48/1, 89, 91, 93/2, 22, 23/1, 24/1, 25/1, 26, 30/1, 37, 47/1, 61/1, 90, 92/2 and 94/2, Saidapet Taluk, from one R.Vasantha and five others for a valuable consideration on 16.3.2005; that in order to verify the veracity of the vendor's statement, they sought for certified copies of the two settlement deeds; that they satisfied with the same; that they also sought for the encumbrance certificate for a period of 20 years from 1.1.1942 to 31.5.1969 and also from 1.6.1969 to 31.12.1986 for a period of 18 years wherefrom they found the property without any encumbrance whatsoever; that by way of abundant caution, the agreement of sale was presented for registration on 16.3.2005 by the purchasers as well as the vendors; that a sum of Rs.10,00,000/- was agreed between the parties as advance; that for the purpose of registration, a sum of Rs.6,00,000/- was shown as advance in the document itself; that the document was registered, but was kept pending for the production of the identity card of one person among the vendors; that it has also been produced; that even then, the delay was caused; that the first respondent issued a receipt on 16.3.2005 for the payment of registration fees of Rs.6,100/-; that the matter was pending; that while the matter stood thus, since the authority did not return the document, a writ petition was filed in WP No.15702 of 2005 wherein there was a direction issued by this Court to the respondent therein subject to the condition of the petitioner filing an undertaking to pay the stamp duty pursuant to Section 47A of the Indian Stamp Act with further undertaking not to encumber or alienate the property in question; that even after the production of the same, it was kept pending; that the stamp duty has been paid; that while the matter stood thus, he once again applied for encumbrance certificate on 18.12.2006; that on receipt of the same, he came to know that a deed of cancellation was presented by the respondents 4 to 9 on 25.8.2005; that following the same, the original document dated 23.5.2005 has also been cancelled unilaterally; and that such an act was done with malafide intention.

4.The learned Counsel for the petitioner would further submit that in view of Sec.32A of the Registration Act, there is no question of any unilateral cancellation of an agreement; that by that act, much prejudice has been caused; and that under the circumstances, the order of cancellation has got to be quashed by issuing a writ of this Court.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

5.Contrary to the above contentions, the learned Additional Government Pleader would submit that Sec.32A of the Act has been amended only with effect from 28.6.2006; but, the agreement was entered into on 16.3.2005; that the same was registered on 23.5.2005; that such a cancellation has taken place on 25.8.2005 which was prior to the amendment of Sec.32A on 28.6.2006; that the same was also not given retrospective effect; that under the circumstances, the act of cancellation unilaterally done by the first respondent cannot be questioned, and hence, the writ petition has got to be dismissed.

6.The Court paid its anxious consideration on the submissions made.

7.This Court is of the considered opinion that it is a fit case, where the relief could be granted by allowing the writ petition. It is not in controversy that the petitioner along with four others entered into an agreement for purchase of an immovable property mentioned in the document. The document was also dated 16.3.2005 and was placed for the purpose of registration. Though the document was registered on 23.5.2005, it was not returned. Hence, one Hussain filed WP No.15702 of 2005, which was ordered. Pursuant to the same, the document was returned after the payment of the stamp duty due. While the matter stood thus, the respondents 4 to 9 made a deed of cancellation which is the subject matter of challenge, and it was also registered, by which the earlier agreement dated 16.3.2005 and registered on 23.5.2005, was cancelled. Now, at this juncture, it would be more apt and appropriate to reproduce Sec.32A of the Registration Act, 1908, as follows:

> "32A Compulsory affixing of photograph, etc – Every person presenting any document at the proper registration office under Section 32 shall affix his passport size photograph and finger prints to the document:
> Provided that where such document relates to the transfer of ownership of immovable property, the passport size photograph and the finger prints of each buyer and seller of such property mentioned in the document shall also be affixed to the document."

8.A reading of the above provision would clearly indicate that when the document relates to the transfer of ownership of immovable property, the passport size photograph and finger prints of each buyer and seller of such property mentioned in the document, should be affixed to the document. In the instant case, though the document in question is not one transferring the ownership of immovable property, but only an agreement for sale entered into between the buyer and the seller, this provision making the affixture of the photographs and finger prints of both the buyer and the seller of the property in the document, can

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

also be extended to the same. This would equally apply to a document for cancellation of an agreement for sale which is placed for registration before the Sub Registry.

9.Now, the contention put forth by the learned Additional Government Pleader, is that Sec.32A of the Registration Act was amended only on 28.6.2006; that it could not be given retrospective effect, but only prospective effect, and under the circumstances, the registration of the cancellation deed by the first respondent on 25.8.2005, which was prior to the amendment, cannot now be challenged. This contention, though attractive at the first instance, cannot be countenanced in law for the reason that though the amendment has been made on 28.6.2006, this Court is of the considered opinion that once there was an agreement entered into between the parties, and it has also been registered on 23.5.2005, now it has been unilaterally cancelled at the instance of one party even without notice, which would suffice to quash the same. If a bilateral agreement which was placed by the parties for registration, is allowed to be cancelled by way of registration of another document namely deed of cancellation, even without the other party being put on notice, will be not only against the principles of law, but also against the principles of natural justice. Under the circumstances, such an act cannot have a sanction in law. Hence, the cancellation of the agreement dated 23.5.2005, by the first respondent, Sub Registry, has got to be necessarily quashed. Accordingly, it is quashed, and this writ petition is ordered. No costs. Consequently, connected MP is closed.

nsv/

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1.The Sub Registrar
Sub Registrar Office
Alandur at Nanganallur, Chennai 600 061.

2.The District Registrar
Registration, Saidapet, Chennai 600 015.

3.The Inspector General of
Registration
Mylapore, Chennai 600 004.

+ 1 cc to the Government Pleader, SR No.62362
+ 1 cc to Mr. V. R. Karthikeyan, Advocate SR No. 62313

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/